



Office of the  
Ohio Consumers' Counsel

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Robert S. Tongren  
Consumers' Counsel

August 15, 1996

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William F. Caton  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

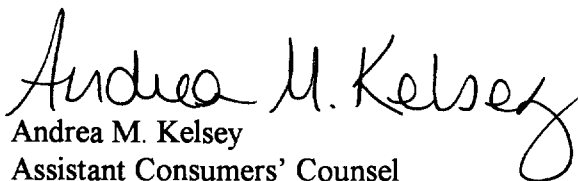
**Re: CC Docket No. 92-77**

Dear Mr. Caton:

Enclosed please find the original and nine (9) copies of the Office of the Ohio Consumers' Counsel's Reply Comments and Summary to be filed in the above-referenced proceeding.

Please date-stamp and return the additional copy in the pre-addressed, postage prepaid envelope to acknowledge receipt.

Sincerely,

  
Andrea M. Kelsey  
Assistant Consumers' Counsel

AMK/mvw  
Enclosure

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	FCC 96-253
	)	
Billed Party Preference for	)	CC Docket No. 92-77
InterLATA 0+ Calls	)	

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**REPLY COMMENTS OF THE  
OFFICE OF THE OHIO'S CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

The Office of the Ohio Consumers' Counsel (OCC) herewith submits its replies to selected comments filed in the Second Further Notice of Proposed Rulemaking (NPRM) initiated by the Federal Communications Commission (Commission) in this docket. In so doing, OCC generally follows the outline of the NPRM itself, but addresses at the outset one matter upon which comments were not solicited, but upon which comments were filed. This matter is the role that consumer expectations should play in imposing new requirements on other service providers (OSPs).

**II. CONSUMER EXPECTATIONS**

A number of commenters state that the Commission should not take consumer expectations into account in this docket. Their reasons are numerous. For instance, Oncor Communications, Inc. (Oncor) stated that basing Commission rulemaking on consumer expectations is bad public policy and inherently arbitrary. Oncor at 4. Oncor

also complains that the Commission proposal does not define consumer expectations.

Oncor at 6.

In response, OCC submits that the purpose of regulation is public protection, and this includes consumer protection. As stated in the NPRM, based on the increasing complaints the Commission has received from consumers, OSP rates have far exceeded what consumers expect to pay; hence current measures regulating OSPs have not met the goal of protecting the public. In this arena, the aggregators who form the OSP customer base are not the end users who require protection. For the most part, aggregators are sophisticated businesses who have their choice of many providers and strike favorable bargains for themselves. A favorable bargain for an aggregator is not necessarily a favorable bargain for the end user, who is without a choice and who will ultimately pay the bill. OCC cannot agree that the Commission has no business taking consumer expectations into account, or that this can be bad public policy or inherently arbitrary.

U.S. Long Distance, Inc. (USLD) submits that customer complaints are not a good yardstick for determining that consumer expectations have not been met because the Commission data is too old. USLD at 6. In response to this argument, OCC points out that it has experienced the same increase in complaints, and the complaint information submitted in OCC's initial comments is extremely current. Both CompTel and Hotel Communications, Inc. (HCI) submit that customer expectations are different when customers are not at home, that they expect to pay a premium. CompTel at 12-13; HCI at 4. The most striking counter to this argument is the complaint made at the Public Utilities Commission of Ohio when this very NPRM was under discussion, by a commissioner,

surely a relatively knowledgeable consumer of telephone services, about charges he incurred when making a call from a Cleveland hotel. Meeting of the Public Utilities Commission of Ohio, July 11, 1996. HCI insists that customers know their options. . HCI at 4-5. Nonetheless, clearly not all of them do, sophisticated though they may be

OCC submits that consumer complaints are an excellent yardstick for determining that consumers are incurring bills in amounts that they do not expect, and that this is a legitimate Commission concern. The Commission would be ignoring its regulatory responsibilities and allowing bad public policy to persist if it did not take consumer expectations into consideration in this docket.

### **III. PRICE DISCLOSURE**

Many commenters object to the Commission's price disclosure proposal. Some assert that currently technology is not available to implement price disclosure. USLD at 14; Intellicall at 6, 10-12. Ameritech, on the other hand, states that it is available. Ameritech at 7. Others deem the proposal too costly. CompTel at 19; Telephone Resellers Association (TRA) at 7; APCC at 4-5; MCI at 3-4. Providers complain about call delays, CompTel at 19; MCI at 3-4; Intellicall at 5, and real time rating. USLD at 14; Intellicall at 6, 10-12. Indeed, Intellicall insists it is impossible. Intellicall at 5. Ameritech, again, insists that it is not. Ameritech at 6-7.

Both the Inmate Calling Services Providers Coalition (ICSPC) and Gateway Technologies, Inc. (Gateway) state that disclosure is not a problem. ICSPC at 12-13; Gateway at 10. Although ICSPC supports disclosure only of rates that exceed the

benchmark, Gateway is even willing to provide real time disclosure of *all* rates for calls placed by inmates. *Id.* These specialized niche providers incur special costs for the CPE and network functionalities required to accommodate confinement facilities' security needs. If Gateway and ICSPC's members can provide price disclosure, then other providers should not be heard to complain that they cannot.

#### **IV. SETTING A BENCHMARK: APPROPRIATE LEVEL**

CompTel submits that the proposed benchmark level is inappropriate because there is no finding that OSP rates are unreasonable or that the rates charged by MCI, AT&T, and Sprint are reasonable. CompTel at 6. Ameritech submits exactly the opposite.

Ameritech submits that ... the three largest IXC's are the best yardstick.. This is true not because those three largest carriers are more efficient, or because they are less costly, or because they happen to feel a greater empathy with consumers. Instead, it is true because each of those carriers, besides providing operator services at aggregator locations, also serves a vast base of *non*-aggregator locations (i.e., ordinary residence and business) locations. The rates charged at those residence and business telephones have been established in the heat of the intense rivalry of the presubscription ballot campaigns and other competitive long-distance wars of the last decade....

In contrast, the specialized carriers who only service aggregators have never been in a ballot campaign competing directly for the presubscription choices of end users, so their charges have never had to face the rigors of competition.

Ameritech at 4-5. If prices are to be competitive, then prices set by competition surely have a presumption of reasonableness.

## **V. CONSEQUENCES OF EXCEEDING THE BENCHMARK**

### **A. DISCLOSURE OF PRICE**

Several commenters charge that requiring disclosure of prices over a benchmark is discriminatory, in part because MCI, AT&T and Sprint will never face disclosure requirements -- their rates will be the benchmark. Opticom at 4; Oncor at 7. Consumers will also associate disclosures with high rates. Opticom at 4; APCC at 7. The commenters claim that OSPs will not be able to recover costs, and that disclosures are therefore anticompetitive. Opticom at 5; APCC at 7. Opticom complains that OSPs will have to charge below benchmarks. Opticom at 4.

ICSPC, on the other hand, sees forcing rates to approach benchmarks through disclosure as a positive development. ICSPC at 12-13. As pointed out above, if inmate calling providers can recover their costs while conforming to a benchmark, then other providers should be able to do so as well.

## **VI. FORBEARANCE**

CompTel submits that the Commission should forbear from applying the informational tariff requirement, arguing that the market environment sufficiently protects consumers. CompTel at 23. The National Association of Attorneys General (NAAG), Sprint and the California Public Utilities Commission and People of California (CPUC) are against forbearance. NAAG at 11; Sprint at 9; CPUC at 5. Sprint submits that competition, as opposed to protecting consumers, drives OSP rates up, because aggregators derive an economic benefit from OSP contracts, the cost of which is passed

on to end users. Sprint at 9. Sprint points out that OSPs can game the system if they need not file informational tariffs, for example, charging exorbitant rates for calls that go beyond the number of minutes for which they are required to provide rate disclosure to customers. *Id.* Sprint submits that the abuse cited by the Commission (informing customers that rates are FCC approved when, in fact, the rates are simply filed without further Commission action) will not be avoided by forbearance. *Id.* Sprint argues that any failure of informational tariffs to protect consumers in the past has resulted from the Commission's failure to penalize abuses. *Id.* at 10. NAAG agrees and argues for vigorous enforcement and the imposition of penalties on OSPs who make false statements. NAAG at 11-12. One commenter suggests that informational tariffs are not required because no deceptive practices have occurred. Oncor at 16-17. This assertion ignores the previously cited Commission observation.

In its initial comments OCC concurred with the Commission position that forbearance might do little to curb OSP abuses and that because of their lack of access to them, end users were unlikely to benefit from informational tariffs. NAAG points out that at the very least, such tariffs are useful to consumer advocates. NAAG at 12. If the Commission does indeed vigorously pursue providers who engage in deceptive practices, then OCC is now inclined to join the position taken by Sprint and NAAG. If the Commission cannot pursue such providers, however, informational tariffs serve little practical benefit.

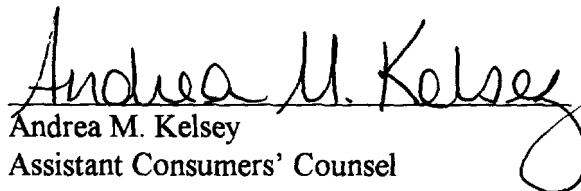
## VII. CONCLUSION

In its Initial Comments, OCC endorsed consumer education as the key to informed consumer choice. *Accord*, TRA at 5. As the Commission said in its NPRM "disclosure of prices prior to consummation of a transaction basic tenet of our economic system. NOPR, ¶ 34, citing the Comments of the Staff of the Colorado Public Utilities Commission at 6.

The Commission's proposal will accomplish that goal, and OCC supports it.

Respectfully submitted,

ROBERT S. TONGREN  
OHIO CONSUMERS' COUNSEL

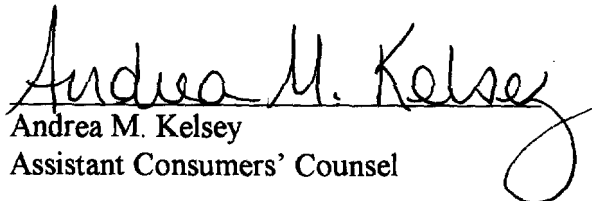
  
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### **CERTIFICATE OF SERVICE**

I hereby certify that the Reply Comments of the Office of the Ohio Consumers' Counsel have been served by overnight mail to the International Transcription Service, two (2) copies to the Enforcement Division, and, in diskette form to Adrien Auger on this 15th day of August, 1996.

  
Andrea M. Kelsey  
Assistant Consumers' Counsel